No. 93-445

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

LENARD RAY BEECHAM

and

KIRBY LEE JONES,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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PETITIONERS' REPLY BRIEF

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The Solicitor General's argument on the straightforward question of statutory construction presented by these cases suffers from two serious flaws: *First*, the Solicitor General bases his argument on a misunderstanding and mischaracterization of the concept of "restoration of civil rights." *Second*, much of the Solicitor General's argument is diversionary and irrelevant, invoking anomalies and

uncertainties created by a wholly distinct issue of statutory construction that does not affect the question whether the federal firearms law treats federal predicate convictions differently from state predicate convictions.

I
THE SOLICITOR GENERAL'S PERCEPTION OF "RESTORATION OF CIVIL RIGHTS" IS ERRONEOUS

The Solicitor General begins his argument with a proposition that he describes as "simple" — *i.e.*, that the federal firearms disability imposed upon a convicted felon depends on his "continuing status as a convicted felon." Brief for the United States at 6. The Solicitor General then asserts that, with respect to anyone convicted of a federal offense, "it is federal law that determines the status of the defendant's conviction, not the law of some other jurisdiction." *Id.* at 7.

Whether a convicted felon may legally enjoy civil rights such as the right to vote, to serve as a juror, or to hold public office does not, however, depend on his "continuing status as a convicted felon." Neither the deprivation of those civil rights nor their restoration affects the felon's "status as a convicted felon." Separate state legislation takes away the rights of a convicted felon, and separate legislation restores those rights. By restoring a felon's civil rights, a state law does not extinguish the felony conviction.

In contrast, if a felony conviction is expunged or set aside, its "status" is affected because the conviction has been determined to be invalid or without legal effect. But "status" is not affected by a state law that permits a convicted felon to vote, sit on a jury, or hold public office.

Nor does deprivation and restoration of civil rights occur in the abstract. An individual's right to vote is taken away after he has been convicted of a felony if he seeks to vote where he resides. If that State's law denies the franchise to convicted felons, he will be turned away from the voting booth. He will similarly be stricken from a roster of eligible jurors. If the convicted felon thereafter qualifies for a restoration of rights — either by the occurrence of certain events or by the issuance of a certificate restoring civil rights — he or she will be permitted to vote or to sit on a jury notwithstanding his or her "continuing status as a convicted felon."

Congress determined in 1986, when it passed the Firearm Owners' Protection Act, to allow convicted felons to possess firearms not only if the "status" of their convictions is changed by expungement or reversal, but also if a convicted felon "has had civil rights restored." [1] Congress surely knew that individuals convicted of felonies in either state or federal courts are deprived of civil rights by the laws of most States. And the laws of most States also contain provisions — applicable equally to state and federal felons — that restore the civil rights that have been taken away under specified conditions.

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[1] A pardon lies somewhere between the revision in "status" that results from an expungement or reversal and the change in collateral consequences that results from a restoration of civil rights. Courts have given different effects to pardons. In *United States v. Geyler*, the Ninth Circuit said that a pardon "nullif[ies] the conviction itself." 932 F.2d 1330, 1332 (1991). Other courts have held that a pardon acknowledges and retains the conviction, while restoring most civil rights. See Special Project, *The Collateral Consequences of a Criminal Conviction*, 23 Vand. L. Rev. 929, 1145 (1970).

The issue in this case is, therefore, whether there is an implied exception to the general restoration-of-civil-rights language of Section 921(a)(20) for federal felony convictions. If a federal felon demonstrates that in the State where his federal conviction occurred or in the State where he resides, his rights to vote, serve on a jury, and hold public office have been restored by state law, is he nonetheless prohibited from possessing a firearm because the "status" of his federal conviction has not been changed by the federal court that entered his felony conviction? The sentence in Section 921(a)(20) that controls these cases does not speak to the "status" of a conviction; its plain language relates only to whether the defendant has "had civil rights restored." And both petitioners in these cases qualified under those terms.

Congress' policy in this regard is entirely rational. By tying the right to possess a firearm under federal law to the restoration of civil rights, Congress has declared that if state law permits a convicted felon to sit on a jury or hold public office notwithstanding his continued "status" as a convicted felon, he or she should also be relieved of the federal disqualification to possess a firearm. That conclusion does not depend on any legal change in the "status" of the felon's conviction. And it surely does not contemplate a state court revising the "status" of a federal felony conviction.

In summary, the Solicitor General errs when he defines the restoration of civil rights as "an act by one sovereign to return to the defendant the rights that the sovereign took away when it convicted the defendant." Brief for the United States at 14. In convicting a defendant, the "sovereign" takes away his liberty and his money because it imprisons him and/or requires him to pay a criminal fine. The conviction itself does not deprive the defendant of civil rights. He is deprived of civil rights by other laws if he attempts to exercise those

rights. If either the State of his residence or the State where he is convicted takes away the rights to vote, serve on a jury, and hold public office by other statutes and then restores those rights, the precondition of Section 921(a)(20) has been satisfied regardless of which jurisdiction initially convicted the defendant.

II
THE "CONFUSION" DESCRIBED BY THE SOLICITOR GENERAL IS IRRELEVANT TO HIS PROPOSED DISTINCTION BETWEEN STATE AND FEDERAL CONVICTIONS

The Solicitor General notes that the restoration-of-civil-rights language of Section 921(a)(20) does not specify whose law governs the question whether rights have been restored. Brief for the United States at 16. He then argues that this uncertainty creates "confusion and disparate results," and that a rule that would carve out federal felony convictions from the restoration-of-civil-rights clause would provide more certainty and predictability. This argument is, however, a diversionary tactic. The confusion and uncertainty which the Solicitor General describes is not the result of the statutory interpretation that we advocate.

The ambiguity in the statute relates to geographic concerns, not to questions of federal or state jurisdiction. Mooted issues arise only because defendants move from one State to another, and the language of Section 921(a)(20) does not specify whether the restoration-of-civil-rights law of the State of conviction or the restoration-of-civil-rights law of the State of residence determine a defendant's status under the federal firearms laws. If a defendant is convicted in federal court and thereafter resides in the State where he was

convicted, the confusion described in the Solicitor General's brief will not exist. Since federal statutes, with a few narrow exceptions, neither take away civil rights nor restore them, the federal-state distinction does not contribute, in the slightest, to the confusion described by the Solicitor General.

The Solicitor General maintains, however, that because confusion would result if a court were to consider the law of any State other than the State of a defendant's conviction, it also follows that restoration of civil rights for a federal conviction must be judged by federal law. The reasoning is patently incorrect. Even if, to obtain greater certainty, Section 921(a)(20) were to be construed to recognize a restoration of civil rights only if granted by the law of the State of conviction, the same certainty could be secured for federal felony convictions by looking only to the law of the State in which the convicting federal court sat. And if the law of the defendant's residence were the standard to determine whether there has been a statutory restoration of rights — an interpretation that hews more closely to the statutory language that speaks of a defendant who "has had civil rights restored" — the very same approach would be taken with federal felons as with state felons. The law of the State where they reside would be examined to see if, pursuant to the law of that State, they may vote, serve as jurors, and hold public office.

The possibility of a "civil rights bath" hypothesized by the Fourth Circuit and by the Solicitor General is greatly exaggerated. The likelihood that a convicted felon will move from a residence in State *A* (which has no restoration-of-civil-rights law) to a temporary location in State *B* just in order to take such a "bath" and then return to State *A* is, we believe, not a significant one. And if such a move is merely a pretext to obtain a "bath" and is not made to change a residence in good faith, the courts may look behind it and refuse to accept

the assertion that the defendant's civil rights were truly restored.

In any event, the undecided choice-of-law issue may be litigated in the future. The existence of the issue does not validate the Fourth Circuit's erroneous conclusion in *Beecham* and *Jones* that a federally convicted felon may not benefit from a restoration of civil rights.

III
RECENT DECISIONS CONTINUE TO REJECT IMPLICIT STATUTORY LIMITATIONS

If the petitioners are to be denied the benefits of Section 921(a)(20) even though they have "had civil rights restored" for their federal felony convictions, it could only be because limiting language is being implied into the statute. Either the word "state" is being inserted between "Any" and "conviction" in the opening two words of the relevant sentence, or the words "by the convicting jurisdiction" are being inserted, by implication, to follow "has had civil rights restored." In our main brief we listed a number of recent decisions of the Court that have rejected arguments that unexpressed limiting provisions should be implied in a statute consisting of plain terms which are unqualified. Since the filing of our main brief, this Court has issued two additional decisions that follow the same course.

(1) In *Fogerty v. Fantasy, Inc.*, No. 92-1750, decided March 1, 1994, the Court held that the plain language of Section 505 of the Copyright Act of 1976 required that a prevailing defendant be treated the same, for purposes of an attorney's fee award, as a prevailing plaintiff. The Court, per the Chief Justice, rejected a "dual standard" that the court of appeals had implied in Section 505.

(2) *National Organization for Women, Inc. v. Scheidler*, 114 S. Ct. 798 (1994) — The Court unanimously rejected the argument that a violation of the Racketeer Influenced and Corrupt Organizations ("RICO") Act required proof of an economic motive and that this qualification should be read into the law. The court, in an opinion by the Chief Justice, observed that Congress could easily have "narrowed the sweep of the term 'enterprise'" if it had wanted to limit the reach of the law. 114 S. Ct. at 805.

CONCLUSION

For the foregoing reasons, as well as those stated in our main brief, the judgments of the court of appeals in the *Beecham* and *Jones* cases should be reversed and the cases remanded for consideration of the remaining issues.

Respectfully submitted,

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